

IN THE SENATE OF THE UNITED STATES.

JANUARY 17, 1859.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

ALMANZON HUSTON *vs.* THE UNITED STATES,

(Recommitted by both Houses of Congress.)

1. The petition of the claimant as amended.
2. Depositions offered by the claimant, and numbered 1, 2, 3, 4, 5, 6, 7, 8, and 9, transmitted to the Senate.
3. Certified documents and letters from the Post Office Department transmitted to the Senate.
4. Claimant's brief and argument.
5. United States Solicitor's brief.
6. Opinion of the Court adverse to the claim.

The original report, No. 16, of the Court of Claims to the Senate, and recommitted, is herewith returned to the Senate. The report of the House of Representatives was printed, and will be found in the printed House documents, report No. 197, 1st session 34th Congress.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the
[L. S.] seal of said Court, at Washington, this 17th day of January,
A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

DISTRICT OF COLUMBIA, *Washington County, ss.**To the honorable the Judges of the Court of Claims:*

The petition of Almanzon Huston, a resident citizen of the State of Texas, respectfully sheweth unto your honors, that the government of the United States is justly indebted to him in the sum of \$21,160.

In the month of October, 1848, your petitioner became sub-contractor under one R. W. Martin for carrying the United States mail from Sabine town to San Augustine, in said State of Texas, a distance of twenty-eight miles, for the sum of \$575 per annum for two-horse coach service; and about the same time he became a sub-contractor under one George W. Grant to carry the mails from San Augustine to the city of Houston, upwards of two hundred miles, in two-horse coaches, and a horse mail from Huntsville to Washington, about seventy-five miles, for the annual compensation of five thousand one hundred dollars. Soon afterwards the service from Huntsville to Washington was increased to two-horse coach service, and an additional allowance was made petitioner by the Postmaster General of \$750; an increase of speed was also ordered from seven to five days on the lines, for which an additional allowance of five hundred dollars was made.

Your petitioner would represent that the increase of mail matter into Texas after the close of the war with Mexico was so great that it became impossible to transport it in two-horse coaches. An application was made to the Post Office Department for an increase of service, which was declined in consequence of annexation having taken place too late for the regular mail lettings in 1846. Your petitioner would state that the route in question was the great thoroughfare in and through the State of Texas, and over it had to be transported all the mails for a very large portion of the State. From this main route, branch routes distributed the mails through eastern, northern, and a large portion of middle Texas. The importance of this route rendered it essential, for the regularity of the mails throughout the State, that it should not only be kept up, but that sufficient service should be placed upon it to enable the contractor to carry the whole mail through.

Under these circumstances your petitioner placed on the entire route four-horse post coach service on the first of November, 1848, and continued it to the 30th day of June, 1850, when his contract expired. In his efforts to sustain this route, in spite of bad roads and high prices of everything, your petitioner spent three times the amount of his contract pay. His whole estate was expended in keeping up the public service and in preserving the regularity of the United States mails. Had he not performed the service he did, the whole mail facilities of the interior of Texas would have been useless, as they were supplied through your petitioner's efforts, and over his route.—(See papers on file.)

The whole amount allowed your petitioner, including the additional compensation, was \$6,894. The contracts which were made in the spring of 1850 by the General Post Office Department for precisely the same service, and which went into operation on the first day of July, 1850, amount in the aggregate, and at the lowest bids, to \$19,590. Therefore, your petitioner prays an allowance for the labor and service performed by him for the general government, (the benefits accruing from which flowed into the national treasury,) equal in amount to the difference between the sum he received and that which was allowed under the contract of 1850 for the same service, making the sum of \$12,696 per annum, or \$21,160 for the time he performed the service.

Your petitioner applied to the Congress of the United States for relief, and on the 12th of April, 1850, his application was referred by the Senate to the Committee on Post Offices and Post Roads; and on the 16th May following there was a bill reported, but no other action then had. In 1854, February 27, the subject was again referred to the appropriate committee, and on the 9th day of March a bill was reported, in words as follows:

“A BILL for the relief of Almanzon Huston.

“*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Postmaster General be, and he is hereby, authorized to examine the claims of Almanzon Huston for additional compensation for carrying the mail from Sabine town to the city of Houston, and from Huntsville to Washington, in the State of Texas, and make such allowance as the said Postmaster General may deem just and equitable, and that the amount, if any be so awarded, be paid out of any moneys in the treasury not otherwise appropriated.*”

This bill was passed on the 7th day of April following, and sent to the House of Representatives for its concurrence. On the 19th of April, 1854, the bill was reported from the committee, and, on motion, laid on the table; and on the 17th January, 1855, it was again referred to the Committee on Post Offices and Post Roads, *which agreed to report the bill without amendment, and recommend its passage.* No report, however, was made, for the want of time, and Congress adjourned without any final action on the bill.

Your petitioner would also state that he is the original and only party in interest in the claim; and prays your honorable Court to frame such a bill for the action of Congress as will appropriate to him the said sum of \$21,160; and, as in duty bound, he will ever pray, &c.

A. H. EVANS, *Attorney for Claimant.*

THE STATE OF TEXAS, *San Augustine County.*

I, Almanzon Huston, do solemnly swear that the facts as set forth in the foregoing petition are just and true, to the best of my knowledge and belief, so help me God.

ALMANZON HUSTON

Sworn to and subscribed before me, the undersigned authority, on this 12th day of June, 1855.

R. F. SLAUGHTER, *J. P.*

And now comes the said claimant, Almanzon Huston, by his attorney, Alexander H. Evans, and leave of the Court being first had and obtained, amends his original petition, to wit:

First. Make the last line on the first printed page read on the 1st of November, instead of in the month of November.

Secondly. Insert in the third line of the first page \$21,160, in lieu of \$14,894.

Thirdly. In the tenth line, second page, insert \$6,894, instead of \$6,985.

Fourthly. In thirtieth line, second page, insert \$19,590, instead of \$16,290.

Fifthly. In the nineteenth line, on second page, insert \$12,696 for \$9,365; and in lieu of \$14,827, insert \$21,160.

Sixthly. In second line, on third page, in lieu of \$14,827, insert \$21,160.

A. H. EVANS, *Attorney.*

UNITED STATES COURT OF CLAIMS.

ALMANZON HUSTON *vs.* THE UNITED STATES.

Brief.

This cause was before the Court of Claims in 1856, and it was then decided that petitioner showed a good cause of action, which entitled the plaintiff to relief; and the proof fully sustaining the allegations in plaintiff's petition, this honorable Court ordered and decreed that the plaintiff was entitled to recover of the United States the sum of \$11,490, and reported a bill accordingly to Congress, which was referred by the House of Representatives to the appropriate committee, and was, upon motion in the House, referred to the Court of Claims for a rehearing; and as all the questions of law in the case have been settled by the Court in its former decision in favor of the petitioner, the case is now again before the Court to be heard and determined upon its merits.

The petitioner claims nothing from the government but that which he is justly entitled to receive. His claim is not one of an ordinary mail contract, but grew out of a state of facts and circumstances which perhaps may never again arise. Under the government he became mail contractor under the first lettings of the mails in Texas after annexation, which contracts were made by the Postmaster General at a time when the department did not and could not know what mail service was required in Texas, from the fact that the govern-

ment had not then performed any mail service in the State. The late republic of Texas voluntarily merged her political existence in that of the American confederacy, upon no other conditions and stipulations than those of her sister States, that is, to be placed upon the same footing and have guaranteed and awarded to her all the rights, benefits, and privileges of her sister States.

Texas not having been a Territory of the United States, and the general government not knowing what mail facilities her citizens would need, under that state of facts she contracted on the routes of which the petitioner was contractor for two-horse hack service, which was wholly insufficient for part of the time to transport the mails on the routes in question, as proven by the testimony of a number of the most respectable and some of the most distinguished citizens of Texas; most of the witnesses being at the time officers of the United States government, and connected with the Post Office Department, and all of them cognizant of the facts about which they testify.

Then, was the government bound in good faith to grant to the citizens of Texas mail facilities sufficient to transport their mail matters? Most clearly so. If there was an error in letting out the contracts for a want of knowledge on the part of the government of what mail facilities the citizens of Texas would need for the transportation of their mail matter, that error should be corrected by the government, and justice done one of her citizens who has made great sacrifices for the benefit of the government for which he should upon every principle of justice be fully remunerated; for without four-horse post coach service the citizens of Texas would have been, for the time the petitioner carried the mails on the routes in question with four-horse service, in a manner without mail facilities on those routes, as is clearly proven by the testimony.

As all the questions of law having been settled by the Court in its former decision in the case as it now stands, it would seem to present but two questions of fact for the consideration and adjudication of the Court:

First. Was it necessary for four-horse post coach service to transport the mails on the routes of which the petitioner was contractor during the time for which he claims extra pay?

Second. Did he, the petitioner, perform four-horse post coach service on the routes for which he was contractor during the time for which he claims extra pay?

In support of the first fact, petitioner begs leave to refer the honorable Court to the testimony of General Sam Houston and General J. Pinkney Henderson, which prove conclusively that if it were necessary to carry the mails at all on the routes in question, four-horse post coach service was absolutely necessary to transport the mails on said routes; and to refer to the testimony of George L. Clapp, late mail agent of the Post Office Department, and to Colonel S. W. Blount, postmaster at San Augustine, at the time for which the petitioner claims extra pay, and to the testimony of other witnesses in confirmation of the same facts.

And in support of the second fact, petitioner begs leave to refer to the testimony of Thomas P. Collins, postmaster at Crockett, James B. Johnson, deputy postmaster at San Augustine, George L. Clapp, late mail agent, and General Henderson's testimony, and the testimony of every other witness whose testimony is before the Court, who has been interrogated in relation to the matter in question.

The late Postmaster General, in his letter of the 24th of May, to the Hon. R. Brodhead, refers to the report received at the department from Martin K. Smith, postmaster at Houston, of the weight of the mail at Houston, from the 14th of April, 1849, to the 13th of May of the same year, showing an average of 166 pounds and a fraction for each trip.

And also to his testimony that was before the Court, in which he states that the average weight of the mails was 400 pounds; which discrepancy Captain Snell could have very easily explained, had petitioner been able to have procured his additional testimony, but could not from the fact that his residence is to petitioner unknown, he having removed from Houston to one of the extreme frontier counties of the State. But James B. Johnson answers to the second set of interrogatories propounded to him, fully explaining any discrepancy in Captain Snell's statement. By reference to Mr. Johnson's answers it will be seen that about the time Captain Snell made the report referred to, all the mail matter from New Orleans for eastern, southern and western Texas was being sent up Red river and transported over petitioner's routes. In justice to Captain Snell, who is a gentleman incapable of making any statement not strictly correct, petitioner refers to certificates herewith filed, marked F.

The committee of the House of Representatives, to whom was referred the case as decided by this Court at a previous time, have erred in their report in saying that the travel probably justified the four-horse coach service, and it was therefore procured by those to be profited thereby. To rebut that presumption of the committee, petitioner begs leave to refer to the testimony of General Sam Houston, and the testimony of postmasters and of other witnesses who have been interrogated on that subject, which will show that four horses were barely able to transport the mail matter on the routes, and that a passenger could seldom or ever travel by the stages. And the committee have erred in saying that the petitioner paid a bonus of \$2,675 for the contracts, when, in truth and in fact, the sum of \$2,500 was paid by petitioner and Brooks for the stock on the line; and after the purchase of the stock and the transfer of the contracts to Huston & Brooks, petitioner was obliged from the conduct of his partner, Brooks, to purchase the entire interest in the contracts and stock, and to take the entire responsibility upon himself of the contracts with the government, which will appear by reference to the two letters from the Post Office Department, marked F, G, and the testimony of Mr. Dixon, all of which will show that it was not a matter of speculation with petitioner in taking the contracts from Brooks, but one of necessity.

Doubtless the contracts were let on the routes in question by the Postmaster General with a view to the mail service under the postal arrangement of the late republic of Texas, and which was sufficient at the time, as the mail matter of the republic was confined almost within the limits of her own territory, as no mail matter could, before annexation, leave a post office in the United States and come to Texas until the postage due the United States office was paid; but that, after annexation, the citizens of Texas coming under the postal arrangements of the general government, the mail matter increased to such a bulk that it required four-horse post coach service to transport it, of which the United States were the recipients of the increased revenue; and certainly upon no principle of justice could she ask one of her citizens to transport the mails of which she received the revenue without a just compensation, and that under a contract made at a time when it was not known what mail service would be required in Texas; and the presumption is, that the former contracts were disposed of by the original contractors, from the fact that they had become satisfied that they could not carry them out under their contracts; at least the petitioner soon became satisfied, after he had taken them upon himself, that they could not be carried out with two-horse hack service.

That this was not an act of unauthorized assumption by the petitioner, he became satisfied, when but little more than one-half of the period for which the contracts were let had expired, that he must abandon the contracts or place four-horse coach service on the routes. To those conclusions all the testimony irresistibly force the mind. Under that state of facts what did the petitioner do? He placed four-horse service on the routes, not, however, without the advice of George L. Clapp, then special mail agent for Texas, and General Sam Houston and Thomas J. Rusk, United States senators, and all of the postmasters on the routes, some of whom testify that they told him that he certainly would be paid for the extra service.

And as soon as he placed four-horse service on the routes he got Messrs. Houston and Kaufman to notify the department of this fact; and General Houston testifies that he never received any notice from the department that the petitioner would not be paid for the extra service. In addition to which, he got Colonel Blount, postmaster at San Augustine, (the residence of petitioner,) to notify the department of the increased service and the necessity for it; and Colonel Blount testifies that he never received any answer from the department that the petitioner would not be paid for his extra service, or any reply in answer to his letter to the department on the subject; and petitioner never received the letter of the 10th of June, referred to by the late Postmaster General, or any other letter from the department, notifying him, either directly or indirectly, that he would not be paid or compensated for his extra service.

Confine this case within the strictest rules that the committee of the House of Representatives, in their opinion, think all cases of implied responsibility with the government should be confined, and it is a case which entitles the petitioner to the relief he asks, because the

Postmaster General contracted with the original contractors (at the time when it was not known what kind of service would be required) perform certain service, and afterwards it became necessary to increase that service to carry out the contracts; and the petitioner performed that increased service, which the department accepted, and the government would not require the petitioner to perform treble the service that he had contracted to perform, and yet refuse to compensate him for his extra services. It cannot well be conceived how a stronger case of implied responsibility could be made out. Petitioner refers to the case decided at the last term of this Court, of the widow of the late James Reeside *vs.* The United States, which was affirmed by Congress making an appropriation to pay the same.

Petitioner most respectfully refers the Court to the decision made at the last term in this case, in which the rule of compensation is settled to be, that petitioner is entitled to pay according to the rate of the contract; and by that decision no payment was allowed him for his extra services, from Sabine town to San Augustine; and to refer to the testimony of General Sam Houston, now before the Court, which shows that petitioner run sixty-four horses on the routes from Sabine town to the city of Houston, and eight horses from Washington to Huntsville, as per schedule included in General Houston's interrogatories, which number of horses was required to run the distance under the schedule time, seventy-two hours.

Mr. Grant ran the route *from San Augustine to Houston in seven days*, with sixteen horses at a time, when the roads were uncommonly good; and petitioner ran the routes *from Sabine town to the city of Houston* in five days when the roads were most wretchedly bad, the time having been expedited by the Post Office Department from seven to five days. Petitioner refers your honors to the law as cited by your honors in its previous decision of this case.

A. HUSTON, *in person.*

WASHINGTON, November 12, 1857.

CROCKETT, February 13, 1850.

This is to certify that I have just delivered to Colonel A. Huston, mail contractor, from Crockett, fifteen sacks of mail matter, with a six-ox team, from Cincinnati, having to unload several times on the route by bogging down. This is the same load of mail matter that left Cincinnati on the 7th with a six-horse stage, and had to return on account of the high waters and boggy state of the roads.

Z. STEADHAM.

THE STATE OF TEXAS,

County of San Augustine.

Personally came and appeared before me, the undersigned authority, Benjamin F. Benton, a resident citizen of the county and State aforesaid, to me well known, (late one of the editors of the Red Land

Herald, a newspaper published in the town of San Augustine, in said county and State, during the year A. D. 1850, edited by Benjamin F. Price and Benjamin F. Benton,) who, being duly sworn according to law, declares and says that the within and foregoing is a true and correct copy of the proceedings of a certain public meeting held in said town, and of a certain certificate and affidavit, together with an editorial thereon, the first of which was published in said paper of "January 12, 1850," and the latter in that of "February 16, 1850," and both of which were republished in an "extra" of "February 23, 1850."

B. F. BENTON.

Sworn to and subscribed before me, this 19th day of September, A. D. 1857.

Certifying whereto, witness my hand and seal of the county court of [L. s.] San Augustine county, Texas, this 19th day of September, A. D. 1857.

F. H. DIXON,
Clerk County Court, San Augustine county, Texas.

ARGUMENT.

To the honorable judges of the Court of Claims:

May it please this honorable Court, I know that I have placed myself in a very awkward position by endeavoring to place my cause before this honorable Court while laboring under the impediments which I do. But this is not the first time that I have been placed in an awkward position. I was in a very awkward position while performing the services for which I am here seeking justice at your hands; and I here ask of the honorable Court to extend to me that degree of lenity due to a plain, common citizen, and not anticipate from me the strict formalities that should govern a practical attorney. And in summing up the case for the consideration of the Court, I shall endeavor to confine myself to the testimony now before the Court by citing such portions as are material to the case; and in the first place will quote some of the evidence which was introduced on the former trial of this case before your honors:

S. W. Blount, postmaster at San Augustine, certified to the department, under date of February 26, 1850, that the contractor was running four-horse service, and the necessity for the same; says Colonel Huston has performed the service faithfully, and should be paid extra, &c. This is concurred in by Mr. Whittlesey, postmaster at Sabine town.

Thomas P. Collins, postmaster at Crockett, certified to the department in February, 1850, that it is impossible to carry the mail in two-horse hacks, and that the contractor has been running four-horse coaches upwards of twelve months.

J. E. Wade, postmaster at Houston, certified to the department in February, 1850, to four-horse coach service, to high waters, bad roads, &c.

M. O. Dimon, postmaster at Montgomery, certified to the department in January, 1850, that the mail could not be carried in two-horse hacks; that the contractor is running four-horse service; says he is entitled to extra pay, &c.

James Coulter, postmaster at Cypress Creek, certified to the department February 2, 1850, that the contractor was running four four-horse teams between Houston and Montgomery since November, 1848, and that that grade of service was necessary and required.

Samuel Flurnoy, postmaster near Chinno, Nacogdoches county, certified to the department in February, 1850, to increase of mail matter on the route from one to five, and that the mail has been carried in four-horse coaches since November 1, 1848, and that it requires seventeen four-horse teams between Sabine town and the city of Houston.

W. W. Frazell, postmaster at Lockranzy, certified on the 14th of February, 1850, to the department to six four-horse teams on route 6140, and says: I do not hesitate to say he could not carry out the contracts with two-horse hacks. Says the travel is no object, and the contractor ought to be paid extra.

Ephraim Coon, postmaster at Nacogdoches, certified to the department in February, 1850, that two horses could not carry the mail, and that contractor has run four-horse stages since November, 1848. Mr. Coon's certificate is concurred in by B. Hardeman, postmaster at Melrose, Nacogdoches county.

J. C. Smith, postmaster at Huntsville, certified to the department February 6, 1850, that he has just travelled over the route, and that it is impassable for a coach; that the contractor came up last evening in person with several large bags of mail matter; that he has four four-horse teams on this route; has run them since November, 1848; says he ought to be paid extra service; says no man could have done more than the contractor.

F. Pumeroy, postmaster at Cincinnati, certified to the department February 8, 1850, that the mail could not be carried in two-horse hacks, and the mail left that office on the 7th instant with a six-horse team and fifteen bags of mail matter.

George W. Grant, former contractor, certifies that for the last twelve or fifteen months two-horse service is insufficient.

Now, may it please your honors, here is the certificates of twelve postmasters, (from one end of the line to the other,) all going to show the same facts; that is, the absolute necessity of four-horse service, and that four-horse service was actually performed by the contractor on the routes. And this evidence, thus far, is from the officers of the government, and in the Post Office Department. And can your honors for a moment doubt that this evidence is not of the highest order that could be introduced into a court of justice? Twelve sworn officers of the government—sworn to support the Constitution of the United States and the laws of their country, and to protect and per-

form the duties of postmasters over the different offices for which they were appointed—all testifying to the head of the department the same facts, with a unanimity unequalled in the annals of testimony.

Now, if your honors please, I will quote the testimony of some of the same gentlemen in answer to interrogatories propounded to them:

Thomas P. Collins, late postmaster at Crockett, says, in answer to interrogatories: That he carried the mail in four-horse coaches, and that large amounts of mail matter was sent over the routes during those years; his means of information was, he being postmaster at Crockett. Said Huston performed four-horse coach service to the close of his contract, and four-horse service was absolutely necessary; and says that large amounts of mail matter was sent up Red river and over these routes that ought to have been sent from New Orleans to Galveston, thence to Weston, Texas. There was a gradual increase of mail matter during 1848, 1849, and 1850.

M. K. Snell, late postmaster at Houston, testifies, in answer to interrogatories: That the service performed was four-horse coach service; that the average amount of mail matter was from three to five bags; says his means of information was, he being postmaster at Houston in 1848 and 1849; says nothing less than four-horse service could carry the mail matter during 1848 and 1849; says portions of mail matter sent over those routes ought to have been sent over other routes. There was a continual increase of mail matter.

Ephraim Coon, late postmaster at Nacogdoches, testifies, in answer to interrogatories: That early in the summer of 1848 the service was four-horse hacks, and from November, 1848, in four-horse mail stages; says he frequently weighed the mails from said routes west of Nacogdoches—that the average per trip was 520 lbs; I weighed, at the request of the contractor, one trip, 1,370 lbs; says four-horse stage service was indispensable; an average of one hundred pounds per trip ought to have been sent over other routes.

James B. Johnson, assistant postmaster at San Augustine, testifies, in answer to interrogatories: He says, that sometimes the stage was so loaded with mail matter that it could not take a passenger, and sometimes so heavy that it had to be sent in an extra wagon; says four-horse service was absolutely necessary to transport the mail matter, and with that could not at all times keep up the mail matter due; says that a large amount sent up Red river and over said routes ought to have been sent from New Orleans to Galveston and to western Texas; also, that mail matter sent over said route should have been sent further up Red river, and that there was a large increase of mail matter on the route.

George L. Clapp, special mail agent for Texas at that time, testifies, in answer to interrogatories: Says the average amount of mail matter sacks was from three to five, and of letter bags from two to three; says his means of information was derived from being mail agent and travelling with the mails; says a considerable amount of mail matter sent over said routes ought to have gone to Galveston and to the west; he says there was a gradual increase of mail matter during those years,

and he deemed four-horse coaches absolutely necessary; says he, as mail agent of the department, advised the said Huston to continue the mails in four-horse coaches, as he deemed two-horse service useless; says he told him, doubtless, the Postmaster General would allow him additional compensation.

W. B. Reaves, city recorder at Houston, testifies, in answer to interrogatories: Says he carried the mails in four horse coaches to the end of his contract.

E. S. Huston, innkeeper at Nacogdoches, and agent on the line, testifies, in answer to interrogatories: Says the average weight of the mails was from five hundred to five hundred and fifty pounds per trip, and that the service performed was four-horse coach service, and says it could not be transported with less.

This comprises the testimony that was before your honors on the former trial of the case, except the evidences of the public meeting at San Augustine, and the petitions of three hundred citizens of Harris county, at Houston, and petitions from San Augustine and other counties, and numerous certificates from individuals, to wit: Dr. L. Randal, J. M. Rankin, and J. D. Nash, showing the great sacrifices contractor had made to carry out the service, all of which I beg your honors to notice on the present trial of the case.

The petitioner begs leave here to observe, that when he came into the service on those routes, Hon. Cave Johnson was the Postmaster General under whom these contracts were let, and as they were let without a knowledge of what service would be required, it was confidently understood that they would be increased as the necessity of the country demanded; and this was measurably carried out while Mr. Johnson remained at the head of that department; for as soon as a showing was made to the department that the horse service from Huntsville to Washington was not sufficient, Mr. Johnson immediately increased it to hack service; and had Mr. Johnson remained at the head of the Post Office Department, petitioner has no doubt but the extra service would have been granted. But Mr. Collamer coming into the office on the 4th of March, 1849, without a knowledge of the state of the Texas mails, saw proper to take a different course, although this route was the great thoroughfare in and through the State of Texas, and over it had to be transported all the mails for a large portion of the State. Sufficient service should have been placed upon it to enable the contractor to carry the whole mail through.

I will now proceed to draw your attention to the testimony taken since the reference of the case to this honorable Court by the House of Representatives for a rehearing; and in order to rebut some of the grounds assumed in the report of the committee of the House, and some of the errors contained in Mr. Campbell's letter to Hon. R. Brodhead of the Senate, I beg leave to quote the following testimony: I do not know whether your honors deem it necessary for me to notice the report of that committee, for it must appear evident to the Court that the committee in making that report did not examine one particle of the testimony upon which this Court founded its judgment, but made the report solely upon the letter of Mr. Campbell to Hon. R.

Brodhead, and that letter represents only one fact that was not stated in my first petition to Congress for relief; that being, the mails having been weighed at Houston, and found to average only 166 lbs., and that contractor had been notified that increased service would not be allowed on his routes. That that was the correct weight of the mails at Houston for the east at that time, petitioner has no doubt, for the mails were then being sent up Red river, and transported over two hundred miles by petitioner, and that large amounts were thus transported that ought to have gone by the way of Galveston, thence to the west.

J. B. Johnson testifies, in answer to interrogatories. He says: I was assistant postmaster at San Augustine at the dates mentioned in this interrogatory, and did the principal business of the office the greater portion of the time. On account of the large amount of mail matter sent up Red river, by the way of *Grand Ecure*, to this point, and by the large accumulation of mail matter at Alexander when the Red river was low, when sent forward it came in large amounts, greatly exceeding the capacity of the mail service on the routes, from Sabine town to the city of Houston, through this place. On account of the foregoing reasons, I made an application to the postmaster at New Orleans to send the mail matter for this portion of Texas by the way of Galveston and Houston, which was complied with by the postmaster at New Orleans by sending the mail matter on that route for this portion of Texas; and it so continued for quite a length of time during low water in Red river. I think the first application was made in the summer of 1849. When Red river became navigable it was partially restored to that route. Again I made a second application, and the second change by the way of Galveston, I think, took place early in 1850. He also says there were large amounts of mail matter sent up Red river, and throughout the routes in question, that should have been sent by the way of Galveston and to western Texas, and so continued for a long period of time. He says: I have known the contractor to have to procure a private team in order to get the mail forwarded to this place, there being a much larger amount than the service was able to carry forward with a good four-horse coach on the routes at the time.

This evidence I consider sufficient to satisfy the honorable Court that Houston was not the proper point to order the weighing of the mails on these routes; and this evidence, together with E. Coon's, postmaster at Nacogdoches, of the actual weight of the mails at that place from the west, which is from Houston to that place, being an average of 520 lbs., and of one mail weighing 1,370 lbs., being 40½ lbs. more than the weight at Houston for one month, as reported by Captain Snell, postmaster at Houston. This evidence the petitioner considers sufficient to satisfy your honors that the report of Captain Snell of the weight of the mail sent over this route from Houston from April 14 to May 13 was correct, and that his testimony before the Court, saying that the average weight of the mails over the routes in question was over 400 lbs., is also correct. Thus the discrepancy

in Captain Snell's testimony, referred to by Mr. Campbell, is satisfactorily explained.

General Sam Houston says, in answer to interrogatories propounded to him: I usually travelled in the stage when I could. I can form no correct estimate of the average weight and bulk of the mails ; there was during the time but little travel and but few passengers, but the stage was usually well loaded with mail matter.

In answer to 9th interrogatory, he says: Less than four-horse service would have been of no use. Says he was informed by the post-master at Crockett that the mail matter had accumulated to the amount of 41 large bags at that office, &c. This was in the autumn of 1849, and the Court will bear in mind that this was after Mr. Johnson had procured the change of the mails for eastern Texas by the way of Galveston.

In answer to 10th interrogatory, he says: The increase was very great from the distribution of documents from Washington to different parts of the country, which had mainly to pass over these routes, and there was an annual increase of it during those years.

In answer to 11th interrogatory, he says: They were the main leading routes; and furthermore, mail matter which should have entered Texas by way of the Sabine from Grand Ecore was sent from New Orleans to Galveston, and from there to Houston, and transported to that portion of Texas lying east of the Trinity river; thus the accumulation of the great amount of mail matter at Crockett. He says he remonstrated to the department, and requested that the correction should be made at New Orleans, and that only designed for eastern Texas should be sent by way of Red river. The correction was never effectually made, as I am informed, to the present time.

In answer to 12th interrogatory, in relation to the extent of country supplied with mail matter over these routes, he says: I would suppose, not having the means of correct knowledge, about 160 by 200 miles north and south, and 160 east and west.

In answer to 13th interrogatory, he says: In relation to four-horse service from two-horse hacks, it certainly was indispensable, (the change, I mean,) if it was necessary to carry any mails at all on the routes in question.

In answer to the 15th interrogatory, he says: I made repeated applications to the department to increase (them) the service, and I did not fail to encourage the contractor on the routes to risk something in extending his business, from a conviction that the government, when in possession of the facts, would not withhold a fair remuneration for the increased service, and this was done from a knowledge of the necessity of the country at the time.

In answer to the 16th interrogatory, he says: I am satisfied I was never informed that the increased service would not be sanctioned.

In answer to 17th interrogatory, he says: From my recollection of the stands and distances and number of teams on the routes, as shown in the foregoing interrogatory, I believe the schedule represents them fairly and correctly.

In answer to 18th and last interrogatory, he says: I do know that

the service could not have been performed without great labor and expense.

S. W. Blount, postmaster at San Augustine, testifies, in answer to 7th interrogatory propounded to him: That sometimes the mails were very heavy; I have no idea what the average weight would have been; sometimes they were very bulky. Said they were carried in four-horse coaches; don't know the time commenced, but he continued it after commencing to end of his contract.

In answer to 9th interrogatory, he says: I deemed four-horse coach service absolutely necessary in transporting the mail over said route.

In answer to 10th interrogatory, he says: There was a considerable increase, but I do not know the average weight and bulk; and on some occasions the mail matter was left over at this office on account of weight and bulk. Says this route was the main leading route through eastern Texas; says a large portion of eastern Texas was supplied with mail matter brought over the routes in question; says, again, the four-horse service was absolutely necessary.

In answer to 12th interrogatory, asking whether he, as postmaster at that place, had not, by request of petitioner, informed the Postmaster General that petitioner was running four-horse service, and its necessity, he says: I think I did so inform the Postmaster General; I have no knowledge of his answering the letter; I have no knowledge of ever receiving any letter from him (the Postmaster General) on that subject.

In answer to 15th interrogatory, he says: I was postmaster at San Augustine during the years 1848, 1849, and 1850. I do not recollect of ever receiving any order from the Post Office Department to weigh the mails on those routes.

In answer to 16th interrogatory, he says: I recollect being secretary of a public meeting on that business, and I would refer to the publication of the proceedings of said meeting, &c. He says the said Huston was at great expense, and used great energy to keep it up.

A. E. Baker, merchant at San Augustine, says, in answer to 7th interrogatory: During the winter and spring the mails over the routes in question were large and bulky; I cannot now estimate the weight, but at times it was very bulky and apparently heavy. My means of information was from personal observation. Says the service performed was four-horse service. Early in the summer of 1848 he put on four-horse service from Sabine town to Nacogdoches; says he continued four-horse service to the end of his contracts. He says: From my knowledge of the bulk and weight of the mails over the routes of which the said Huston carried the mails during those years, I do not believe it could have been transported with less than four-horse service; says the mails sent over the routes in question during the years 1848, 1849, and 1850, could not have been transported with two-horse hack service; that the change from two to four-horse service was absolutely necessary. I know that the said Huston used great energy and perseverance in carrying the mails over said routes.

J. Pinckney Henderson, ex-governor of Texas, testifies, in answer to 7th interrogatory propounded to him, and says: During the winter

and spring of those years, while Congress was in session, the mails over the routes in question were very heavy, but the average amount per trip I cannot now estimate.

In answer to 8th interrogatory, he says: The service performed by the said Huston on the routes during those years was four-horse service. The time he put on the four-horse service I cannot now recollect.

In answer to 9th interrogatory, he says: I do not believe it could have been transported with less than four-horse service. As a general thing there was a large bulk of mail matter on the routes of which the said Huston was contractor. The route in question was the main leading route from eastern to western Texas.

In answer to 13th interrogatory, he says: If it were necessary to transport the mail matter over the routes of which the said Huston was contractor during those years, it was absolutely necessary to substitute four-horse service in lieu of two-horse hack service. Says said Huston used great energy in carrying out the said contracts.

H. M. Kinsey, attorney-at-law at San Augustine, testifies, in answer to 8th interrogatory: That some time in 1848 he put four-horse service on the routes, and continued the same to the end of his contracts; says I am very confident that during the fall, winter, and spring of those years that nothing less than four-horse service could have carried the mails over said routes; says that after annexation there was a large increase of mail matter on the routes of which the said Huston was contractor. The route was the main leading route through eastern to western Texas, and has been so since the first settlement of the country. Says he deemed four-horse service absolutely necessary, from the fact that without four-horse service we would have been the greater part of the time without mails.

In answer to the 14th and last interrogatory, he says: I know of no other matter relative to the claim in question, save that it is my opinion that but few men in Texas, except Huston, would have carried out the contracts.

Mr. Benjamin F. Benton, clerk of the district court of San Augustine county, in answer to 7th interrogatory, says: I was frequently about the post office during those years; there was frequently a half dozen sacks of newspapers, pamphlets, books, and periodicals, besides the letter and way-mails. When the mails were delayed for any length of time, as many as ten large sacks of mail matter would accumulate at the office; says this was particularly the case at Cincinnati, on the Trinity river. I should suppose the average weight of the large sacks of paper mail was about 100 pounds each, and the large sacks of letter mail 150 pounds.

In answer to 8th interrogatory, says: Two-horse coaches might have been sufficient to have transported the mails a part of the season, but for perfect celerity, winter and summer, four-horse coaches were absolutely necessary; says I doubt whether a six-horse coach could have transported the mails that accumulated in high water.

In answer to 9th interrogatory, says: There was always more mail matter during the session of the United States Congress than at any

other time. There has been a gradual increase of mail matter on the routes since annexation, and particularly since the reduction of letter postage from ten to five cents for unpaid, and to three cents for pre-paid letters. The increase of the mail matter was also caused by the increased business of the country. Said I should suppose that portion of the State supplied by Col. Huston's mail line contained about ten or fifteen thousand voters; I speak of the years 1848, 1849, and 1850.

F. H. Dixon, clerk of the county court of San Augustine county, in answer to 8th interrogatory, says: I deemed four-horse service absolutely necessary to transport the mail matter that passed through this place, (I mean San Augustine, Texas;) nor do I think anything less than four-horse service could have transported the mail matter that was sent through this place to various parts of Texas during the years 1848, 1849, and 1850. He said the number of inhabitants in Texas in 1850 was, by a reference to the census, 212,560 and upwards.

The majority of this population resided east of the Trinity river, I think, and the routes in question supplied that majority with mail matter. Says I was advised not to travel by the stage on this route; I procured a horse, and found it difficult to get through on horseback.

After quoting the foregoing testimony, may it please this honorable Court, allow me to state that no notice was ever given to contractor that the service would not be accepted and that he would not be paid for the same, for General Houston tells you that although he made frequent applications to the department he never was notified that the increased service would not be sanctioned, and that the contractor would not be remunerated for the same. And S. W. Blount, postmaster at San Augustine, gave the department official notice that four-horse service was being performed, and of the necessity thereof, and the department did not notify that it would not be sanctioned.

And here allow me to remark, that through the postmaster at San Augustine (the residence of the contractor) was the proper and legal channel for the department to have given the contractor notice. Suppose you wish to give notice to a man that has trespassed upon your lands, would you write a letter and send it through the post office, or would you reduce it to writing and have it legally served upon him by the proper officer of the government?

Your honors must be aware of the great uncertainty of a notice given through the post office; and I need only refer your honors to papers sent to this Court in this case that have not come to hand, to wit: the testimony of J. M. Ardry, esq., late of San Augustine, Texas, and of Calaway Deen, merchant at the same place; and that petitioner has sent to the commissioner that took the testimony for certified copies of their evidence, which I beg your honors to notice should it arrive in due time; also, that papers do get mislaid and are lost sometimes, after being on file in the Court; for instance, those papers referred to which were on the former trial of this case, to wit: the written statement of Hon. Sam Houston, Thomas J. Rusk, and A. H. Evans, which are not now among the papers of the case.

That the letter of the tenth of June, referred to in Mr. Campbell's letter, was written after receiving the report of Capt. Snell, post-

master at Houston, the petitioner does not doubt; but immediately upon the eve of that, such information was received at the department from General Houston, under date of 18th June, 1849, which satisfied the department that the notice should not, in justice to the contractor, have been given, and was probably withheld; at any rate, it is evident, from the facts and history of the case, that the Hon. Mr. Collamer, the Postmaster General at the time, did not think it just to the contractor to send that letter or notice to Congress, together with the papers and evidence of the case.

This case was first presented to the Hon. Jacob Collamer, Postmaster General, by Messrs. Houston, Rusk, and Kaufman, in person; and petitioner was at the same time introduced to the Postmaster General. He took the case under consideration and came to this conclusion: That, inasmuch as the petitions from the citizens of Texas were more particularly addressed to Congress than to the Postmaster General, and as he did not conceive that he had the power, under the regulations of the Post Office Department, to grant the relief prayed for, he was satisfied, from the facts set forth in the petitions and resolutions of the public meeting at San Augustine, and the representations of Hon. Sam Houston, T. J. Rusk, and D. S. Kaufman, that the service was required; and upon our agreeing to refer it to Congress, he expressed himself much pleased with the manner petitioner was performing the service, and seemed to have no doubt but that Congress would grant the necessary relief, and said he would send the papers in the case to Congress, which he did. And in doing so, it is reasonable to suppose he sent up at that time—then having the case fresh before him—all the papers that should, in justice to either party, have been sent to Congress. And it was in consequence of this just and good feeling, so expressed by the Postmaster General at that time, which induced Messrs. Houston and Rusk to form a bill in the Senate, which passed that body, requiring the Postmaster General to settle with the petitioner for the extra services he had performed on his contracts, upon the principles of law and equity, and to pay him for the extra services he had performed. Thus this matter stood previous to its first reference to the honorable Court of Claims.

The first ground assumed by the petitioner in his brief now before the Court is, that he claims nothing from the government but that which he is justly entitled to receive. His claim is not one of an ordinary mail contract, but grew out of a state of facts and circumstances which, perhaps, may never again arise under the government. The late republic of Texas voluntarily merged her political existence into that of the American confederacy upon no other considerations and stipulations than those of her sister States—that is, to be placed upon the same footing, and have guaranteed and awarded to her all the benefits and privileges of her sister States. Then, was the government of the United States bound in good faith to grant to the citizens of Texas mail facilities sufficient to transport her mails? Most clearly so. Texas having ceased to be a national government, and becoming one of the States of the Union, it devolved upon the United States government then to supply the place of her nationality. She having just arisen out of a long revolution, which had cost

her blood and treasure, consequently her facilities for extending her mail-routes were limited, and her postal arrangements on a very small scale; and it then became the duty of the Post Office Department of the United States to see that the citizens of Texas were properly supplied with mails. Here is a vast country, stretching from the Sabine to the Rio Grande, and from the Gulf of Mexico to the Pacific, with a population over 200,000 inhabitants, including a vast territory large enough to make four or five States in size, on an average, of the other States in the Union, which came suddenly into this Union without first having been under a territorial government of the United States, and at a time just after the mail lettings of the southern section of the States; and there having been no provisions made for her mails, consequently the Postmaster General contracted for the mails on these routes for the service of the postal arrangements of the late republic of Texas, and let the routes in question for two-horse hack service. But, in consequence of the great change which followed the annexation of Texas to this government, it did not, and could not, remain and prove sufficient, for Mr. Coon, postmaster at Nacogdoches, testifies that the average weight of the mails from west of that place was 520 pounds per trip, and one trip weighed by him weighed 1,370 pounds. Mr. E. S. Huston, innkeeper at Nacogdoches, testifies (being agent on the routes) that the average weight of the mails, per trip, was from 500 to 550 pounds. Mr. Clapp, special mail agent, testifies that the average amount of mail matter was from three to five sacks of paper mail and from two to three bags of letter mail. Mr. Benton, clerk of the district court of San Augustine county, testifies that there were often as many as half a dozen sacks of paper, periodical, and book mail, besides the letter and way-mails. S. W. Blount, postmaster at San Augustine, testifies that the mails were very heavy and bulky, and at times had to lie over at that office on account of weight and bulk. Mr. Johnson, deputy postmaster at the same place, testifies that the mails were large and weighty, and at times had to lie over at that office on account of weight and bulk; he has known the contractor to have to send the mails forward in a private wagon when running a good four-horse team, and has known him to refuse to take any passengers on account of the weight and bulk of the mails. Mr. Snell, postmaster at Houston, testifies that the weight of the mails over the routes in question, from Houston, was 400 pounds per trip. Mr. Frizzell, postmaster at Lockranzy, Mr. Pomoroy, postmaster at Cincinnati, Mr. Coulter, postmaster at Spring Creek, Mr. Dimon, postmaster at Montgomery, Mr. Smith, postmaster at Huntsville, Mr. Flurnoy, postmaster at Chireno, and Mr. Harde-man, postmaster at Melrose, all concur in the weight and bulk of the mails, and of the absolute necessity of four-horse service for the exclusive transportation of the mails on the routes. All of the above-named witnesses concur in their testimony in relation to the extreme high waters and bad state of the roads during those years. Mr. Benton, in his testimony, goes more minutely into a historical description of the route, and gives a full and clear history of the route from one end to the other.

James W. Scott, present mail agent for Texas, in answer to inter-

rogatories, testifies, in answer to 7th interrogatory, asking the weight of the mails on the route, he says: I do not know. They now are all under contract and require four-horse coaches. He commenced service in two-horse hacks, and raised it to four-horse coaches. I was agent for Tarbox & Brown part of the time. I know, or believe, that, from the state of the roads and the accumulation of the mails, the celerity of transportation required four-horse coaches, or service equal to it. The mails were continually increasing in weight. The franking privilege, as used by the member of Congress of the eastern district, must have largely increased the weight.

In answer to 11th interrogatory, whether or not these were the main leading routes from eastern to western Texas, he reverses the question, and says: They were then, as now, the principal routes from the coast to eastern Texas, receiving their supply of western mail at Huntsville.

In answer to 12th interrogatory, asking the extent of country supplied, says: I cannot answer precisely. This route now feeds the counties of Montgomery, Walker, a part of Grimes, a part of Polk, Trinity, and Tyler, and the counties of Houston and Nacogdoches—in fact, all the counties bordering on the lower Trinity and what is known as eastern Texas, save and except some of the extreme lower and the upper counties of the Trinity and the coast.

In answer to the last interrogatory, says: I only know that the service was an arduous one, running over bad roads with water-courses unbridged.

Then, may it please your honors, allow me to observe, that from Mr. Scott's testimony you see that the mail from the coast, or Houston, to the east, received its western mail at Huntsville, showing clearly that Houston was the last place on those routes to have ordered the weighing of the mails, in order to ascertain its weight on the routes generally; for without a mail from New Orleans, by way of Galveston, no mail matter left Houston for the east on these routes, except the small amount from the citizens of Galveston and Houston. Mr. Scott says these routes received their western mail at Huntsville. Then Huntsville would have been the proper place to have ordered the weighing of the mails at the west, and San Augustine or Nacogdoches at the east; and during the time the mail was being weighed at Houston it only contained the mail matter of the city of Galveston and Houston; for at that time the States' mail (as we called it) was being sent up Red river and over petitioner's routes to the west, as is clearly shown by the testimony of Mr. Johnson.

The honorable Court, in making up its decision in this case, on its former trial before this Court, say they have no other criterion to be governed by except Mr. Grant's certificate, saying that he run the line from San Augustine to the city of Houston, at a time when the roads were extremely good, with sixteen horses, and that it would necessarily require double that number for the four-horse service, as run by the petitioner. The Court should have been shown by the attorney in the case that Mr. Grant ran on a schedule of seven days' time, and that petitioner ran on a schedule of five days' time, the

speed of the route having been increased from seven to five days. On a schedule of seven days, with light hacks and good roads, one team could travel thirty-five or forty miles and make their time; whereas on a five days' schedule, with four-horse post coaches, from twelve to fifteen miles is heavy service; and there was documentary evidence on file and then before the Court sufficient to show seventy-odd horses then on the routes; for Mr. Coulter's certificate shows four four-horse teams on route No. 6113—Houston to Montgomery; and Mr. Smith's certificate shows four four-horse teams on route No. 6146—Montgomery to Crockett; and Mr. Frizzell's certificate shows six four-horse teams on that route No. 6140—from San Augustine to Crockett; and Mr. Flurnoy certifies that it required seventeen four-horse teams from between Sabine town and the city of Houston. These, together with the horses on the Washington line, make eighteen four-horse teams, or seventy-two horses. It would seem that the Court did not take that portion of the line from Sabine town to San Augustine into consideration. That portion of the line required two teams, being twenty-eight miles of line. And I will here remark, that the average distance to the team, as run by the petitioner, was a fraction over fifteen miles, which is extreme heavy service for four-horse post coach teams, they being usually run from ten to twelve miles. Does not the testimony therefore clearly show to the honorable Court the absolute necessity for four-horse coach service on these routes; and does it not show that petitioner has performed the four-horse coach service on the routes? And does it not as clearly show that this was not an act of unauthorized assumption on the part of petitioner, but one of absolute necessity, compelling him to substitute four-horse service, in lieu of two-horse hack service, in order to get the mails through? A contract for any specific service does not necessarily compel a contractor to carry the whole mail on a route should it greatly exceed the grade of the specified service. For instance, a horse mail could not be compelled to carry the service of a two-horse hack, nor a two-horse hack the service of a four-horse coach. There is only one grade of service that necessarily compels a contractor to carry all the mail matter on his route, should it greatly exceed all other grades of service, and that is called a "star" contract, where the contractor undertakes, for a specified sum, to carry the whole mail with due celerity, certainty, and security. And the testimony clearly shows that after the annexation of Texas to the Union a channel of communication to her was opened from thirty-odd States which had previously been measurably closed, but was now thrown open; and the postal arrangements of the United States having been on a more liberal scale than those of Texas, it consequently sent a large amount of mail matter forward, to find its way into Texas either by the way of Red river, and over these routes, or by the way of Galveston and Houston. And the testimony in the case clearly shows the manner of its entry into Texas, and that it was all either sent up Red river or all sent by the way of Galveston, when it should have been assorted at New Orleans; and the mails for the eastern counties bordering on the Sabine river should have been sent

up Red river; and the mails for the western counties bordering on the Trinity, and for western Texas, should have gone by the way of Galveston and to the west without touching these routes; but, instead of this, petitioner transported the western mail that was sent up Red river over his lines, a distance of over two hundred miles, as is clearly shown by the testimony. Then is petitioner justly entitled to a just remuneration for the extra services he has performed. Mr. Campbell's letter to Hon. R. Brodhead cites the change of the contract from Huston & Brooks to Huston, to take effect January 1, 1849. This change is clearly shown to have been one of necessity on the part of petitioner, in order to secure himself against the dead weight of his partner, Brooks, and that the petitioner was the only responsible party to the government.

Mr. Dixon's testimony says: Brooks was an unsafe partner in any business, &c., and the letters from the Post Office Department, marked F, G, showed that he had long been trying to get Brooks off his hands at the time the change was made; and when the petitioner took the contracts upon himself the postmasters on the routes and the members of Congress from Texas were endeavoring to convince the Post Office Department of the necessity of an increase of service, and that four-horse service was then obliged to be run to carry the mails through on the routes. Petitioner might have continued two-horse hack service, and refused to take any more mail matter than a just amount for that grade of service; but that would have created an unpleasant state of things, and proved ruinous to the mail interest of the country. But instead of doing so, petitioner took the authority of the highest officials of the country, and carried out the contracts for the benefit of the government and the citizens, and in so doing has performed a large amount of extra services of which the government have been the recipients of the increased revenue arising therefrom, and she cannot upon any principle of honor or justice refuse to make a fair remuneration for the same. So soon as petitioner received the result of the former decision of the case by this honorable Court he came immediately on to Washington, to endeavor to get a rehearing in the case, in order to be able to show the actual increase of service on the contracts. This he urged to be done so soon as it came up for action before Congress.

Allow me here to remark, by way of reference, that this is not the first case of implied responsibility which I have performed for my country. I had the honor of commanding the 7th regiment of Michigan militia in 1831 and 1832, and when the Black Hawk war broke out on the western frontier the Indian agent at Chicago made a requisition upon me for two hundred volunteers to defend that place against the attack of the Indians; and in fitting out that campaign, which I did with the shortest despatch, it became necessary for me to involve myself to a considerable amount. I think the United States mail was then being carried from White Pigeon Prairie through to Chicago once in two weeks on horseback, and it became necessary for me to place a relay of horses on the road, in order to forward the expresses through from one post to another. I did not have to await

the action of Congress on this case of implied responsibility, but it was promptly paid by the proper officer of the government upon the bare certificate of an officer of a higher grade. Then I had some reason, when I undertook to perform this service with a full knowledge of (as General Houston says) the necessities of the country at the time, that it would be promptly met. General Houston tells you in his testimony that he appointed me quartermaster general of Texas in 1835; and in sustaining the army in Texas it became necessary for me to perform a large amount of implied responsibility, and I have never shrank from any responsibility for the benefit of my country whenever I have been placed in a position which required my action, but have always carried out all my public undertakings to meet the demands and necessities of my country, and in so doing I have never been actuated with a speculative motive, but by a laudable spirit of patriotism. And could a government like ours fortify itself better, cheaper, or more securely than by making it the interest of every citizen to sustain her whenever a crisis should arise requiring their action? This has ever been my doctrine, and I have always acted up to it in good faith; and wherever I have been placed in a position when the necessities of the country have imperatively demanded, I have always acted up to it. Then, was the position which I am here placed in one which the necessities of the country did imperatively demand action?

From the large amount of testimony introduced in the case, and from the character of that testimony, your honors must come to the conclusion that it was, and that it was absolutely necessary for me to increase the service on those routes, and that I did so with a full knowledge of the necessities of the country before me; for General Houston testifies that he advised me to do so with a knowledge of the necessities of the country at the time, and that he did not hesitate to believe that I would receive a fair remuneration for the same so soon as the government were in possession of the facts. Here is a statement of the facts as they existed at that time:

I was performing a mail service from Sabine town to San Augustine, 28 miles; thence to Crockett, 96 miles; thence to Huntsville, 45 miles; thence to Washington, 54 miles, being 223 miles of western line, and from Huntsville to Houston, on the coast, (as Mr. Scott calls it,) 87 miles. And Mr. Scott, the present mail agent of the department, testifies that the mail from the coast, or Houston, received its western mail at Huntsville. This shows plainly, then, that when the mails were being sent up Red river that I transported the entire western mail from Sabine town to Washington, 223 miles, when, in fact, I should not have transported one pound of it; and from the commencement of the great increase of mail matter on those routes, which the testimony shows to be in 1848, I transported the principal mail matter from thirty-odd States of this Union for western Texas through on these lines to Washington, 223 miles. In many instances it was continued from Huntsville to Houston, making the distance 250 miles. Mr. Johnson's testimony shows that those mails were thus transported until the summer of 1849, when he obtained a partial change by the

way of Galveston. His testimony also shows that when the change was made I then had the entire eastern mail from those States to transport from Houston to the east, two hundred and fifty-odd miles. Mr. Johnson tells you that the mails from New Orleans were restored to Red river again so soon as Red river became navigable; and he afterwards procured a second change by the way of Galveston, which took effect early in 1850. Thus, for the want of a proper knowledge on the part of the postmaster at New Orleans, the mails for Texas were all either sent by the way of Red river, or all by the way of Galveston. Some time in 1850 Mr. Clapp, then mail agent of the department, furnished the postmaster at New Orleans with the names of the counties bordering on the Sabine and east, directing that postmaster to divide the Texas mails at that place, and to send that portion for the eastern counties by the way of Red river, and for the western by the way of Galveston; and General Houston testifies that the correction has not properly been made to this time, as he is informed. Then, from this statement of the facts in the case, there cannot be a doubt of the imperative necessity of an increase of service on those routes. Then the next question arises, Did the petitioner increase that service? And on this question it is only necessary to refer your honors to the testimony of all the witnesses in the case—some twenty-odd. They all agree and testify to the fact; some of them testify that early in the summer of 1848 he placed four-horse service on the routes from Sabine town to Nacogdoches, and so on to Huntsville; and they all agree in saying that from November 1, 1848, four-horse coach service was performed by petitioner to the close of his contract. This testimony shows that the great increase of the mail matter was first on the routes from Sabine town to the city of Houston, by the mails then being sent up Red river, and that petitioner placed four-horse service on that end of the route the 1st of July, on to Huntsville, and completed it through to Houston on the 1st of November, 1848, having run four-horse service two years on about half the line, and one year and eight months on the other half. Then, did the Post Office Department know that petitioner was performing that service? Most clearly so; for Messrs. Houston, Rusk, and Kaufman, then members of Congress from Texas, made the representation to the department, asking an increase of service on the routes, first in 1848, then in 1849. General Houston again pressed the question, under date of 18th of June, 1849, from Nacogdoches; and S. W. Blount, postmaster at San Augustine, at the special request of petitioner, informed the department that four-horse service was being performed by the contractor on those routes, and of its absolute necessity; Mr. Whittlesey, postmaster at Sabine town, concurring in the same, and the certificates of twelve postmasters, from one end of the line to the other, all testifying to the same fact that four-horse service was being performed, and of the necessity for the same. And the petition of three hundred citizens of Harris county, at Houston, and the petitions of citizens of other counties, all representing the same facts, and the resolutions of the public meeting held at San Augustine, were all before the Post Office Department,

as is clearly shown from the fact that all of this evidence in the case was sent from the Post Office Department to Congress by Hon. J. Collamer, then Postmaster General; and the petitioner never was informed that the service would not be sanctioned, and only that the department did not, under the regulations of that office, see or conceive that it had the power to grant the relief asked. And as the petitions from the citizens of Texas were more directly addressed to Congress than to the Postmaster General, he therefore recommended a reference of the case to Congress; said he would send the papers up, which he did. Then, that the service was accepted by the government there can be no doubt, and that the government were the recipients of the increased revenue arising from the same service, which in law and equity makes an acceptance of the implied responsibility or service.

Confine this case within the strictest rules that the committee of the House of Representatives, in their opinion, think all cases of implied responsibility with the government should be confined, and it is a case which entitles the petitioner to the relief he asks.

It cannot well be conceived how a stronger case of implied responsibility could be made out; for General Henderson says, in his testimony, if it were necessary to transport the mails at all on those routes, it was absolutely necessary to substitute four-horse service in lieu of two-horse hacks. General Houston tells you the same, almost in the same words. This is the testimony of the two senators of Texas on that point.

The testimony of twelve postmasters on the route shows the same facts, as well as all the other testimony in the case—some twenty-odd witnesses of the highest standing; and as this case grew out of a train of circumstances which never did, nor in all probability never will, govern any other case under this government, unless, for instance, the republic of Mexico should be annexed to this Union on the same footing which Texas was, and then the Post Office Department undertake to carry the United States mail from its terminus on the Gulf to the city of Mexico in a two-horse hack; for this route was the great leading one from the thirty-odd States, through eastern to western Texas; and when that mail entered Texas by the way of Red river, the petitioner transported the great mail of Texas over two hundred and twenty miles towards the capital of the late republic and the capital of the State; and the mail that entered Texas at that time by this route now finds its way into that country by a route leading from the mouth of Red river through by Burr's Ferry, on the Sabine river; another from Alexandria, on Red river, to Sabine town, on the Sabine river; another from Grand Ecore, on Red river, to the same point; another from Shreveport to Marshall, by the way of Waco, on the Brazos, then to Austin, the capital; and from the coast a mail now enters Texas at Sabine Pass; and another at Galveston, and on to Austin; another at Indianola, and a route leading on to Austin, and another at Brazos Santiago; being four entries on the coast (as Mr. Scott terms it) and four points on Red river, and another route now crosses Red river from Washington, in Arkansas, through to Clarkes-

ville, Texas, so on to the capital of the State. So that there is now nine regular mail lines into Texas, to supply the same extent of country that was supplied by the route from Grand Ecore, on Red river, and over the routes in question during the time the Texas mails were sent up Red river; and all those nine leading routes are now four-horse coach service, and now being advertised for daily service, at a cost probably of not less than \$200,000; and your petitioner supplied the same mails to the country, during the period that the States' mail was sent up Red river, for the sum of \$6,925. The great increase of the mails at and since that time must clearly satisfy your honors that petitioner had something to do on those routes at the time for which he claims extra pay, and that he is justly entitled to a fair remuneration for those extra services.

The committee of the House of Representatives express great fear that the 30,000 postmasters and agents would assume the responsibility of the Postmaster General and bankrupt the department. How does the Postmaster General receive his knowledge, guiding him in the discharge of his duties, unless he acquires it through the postmasters' agents, and citizens of the country where service is required? And the change which took place in the Post Office Department in March, 1849, necessarily found the new incumbent not in possession of a general knowledge of those routes, and when he became properly informed on the subject, these extra services had been performed upwards of twelve months; and then, under the regulations of the department, he thought best to refer the case to the Congress of the United States. Then is the government bound in good faith to pay the petitioner a fair and just sum for his services rendered and moneys expended for the government and people; for in a government like ours the people are the sovereigns, and, consequently, the government. Then I may say that the government have accepted the services, through their sovereigns, the people; for the citizens of Texas have accepted the services, and have petitioned their agents at the head of the government to make to the petitioner a fair remuneration for those services. And the next question that arises is, what is a fair remuneration for the extra services as performed by the petitioner? This honorable Court, in their former decision in this cause, have defined the position to be that the petitioner is entitled to pay according to the increased service on the contract; and as the claimant has assumed in his brief in the case that the law governing the case had already been defined and settled by the Court, the petitioner therefore cites your honors to the law, and here begs leave to quote from your former decision the law governing the case:

"That the United States may be liable upon an implied contract appears from the first section of the act constituting this Court, by which jurisdiction is given the Court to hear and determine all claims founded 'upon any contract, express or implied, with the government of the United States.' What the law looks to, in the case of an implied contract, is not the agreement of the parties, but their circumstances or acts; and from these circumstances or acts the law raises the duty, and implies the promise, by which the party will be bound.

In the case of an express contract, the law measures the extent of each party's duty by the terms to which he has expressly agreed. In the case of an implied contract, the terms are such as reason and justice dictate in the particular case, and which, therefore, the law presumes that every man undertakes to perform.—(Chitty on Contracts, 18 ; Hosmer, C. J., 4 Conn. Rep., 524.) In the case of *Abbott vs. Harmon*, (7 Greenl., 118,) it was held that where one accepts, or knowingly avails himself of the benefit of services done for him without his authority or request, he shall be held to pay a reasonable compensation for them. In this case Mr. Justice Shepley said : 'When one person performs services for the benefit, and with the *knowledge* and *tacit consent* of another, the law implies a promise to pay a reasonable compensation for them.' That was a case where a school-house was built under a contract with persons assuming to act as a district committee, but who had no authority ; yet a district school was afterwards kept in it by the direction of the school agent. This was held to be an acceptance of the house on the part of the district, binding the inhabitants to pay a reasonable value of the building. Upon the same ground is the decision in the case of *Lamb vs. Bunce*, 4 M. & S., 275. A surgeon attended a parish pauper, with the knowledge of the overseer of the parish, and it was held that the fact of the overseer *knowing of* and *not repudiating* the surgeon's attendance, was equivalent to a request. It is stated in 1 Parsons on Contracts, 540, 542, as one of the principles to be deduced from authorities generally, and from the reason of the case, that where the changes in a contract necessarily imply an increased price, and the employer expressly authorizes, or silently, but with full knowledge, assents to them, he is then bound to pay for them.

"That the services alleged were rendered by the claimant ; that they were necessary to be performed ; that the department knew that they were rendered, and made no objection to them, are facts which we find to be proved by the evidence ; and we are also of opinion that the claimant is entitled to compensation from the United States.

"The question then arises as to the mode of ascertaining the value of his services.

"The 23d section of the act of July 2, 1836, (5 Stat. at Large, 85,) points out the duties of the Postmaster General in relation to advertising for contracts, and prescribes limits to his power of making additional compensation for services. Among other things, it provides that 'when any extra service shall be ordered, the amount of the allowance thereof in dollars and cents shall be signified in the order for such service, and be forthwith entered upon the books of the Post Office Department; and no additional compensation shall be paid for any extra regular service rendered before the issuing of such order, entry, or memorandum whatever, on which any action of the department is to be had, allowance made, or money paid ; and every contract, paper, or obligation drawn up in said office by any officer thereof, shall have affixed to it its true date.'

"The object of this provision was to impose a check upon the exercise of the discretionary power of the Postmaster General, by requir-

ing that everything relative to his action upon the subject of extra allowances should be recorded where it might be inspected, so that when the public money should be expended, nothing relating to its expenditure should be left unexplained or uncertain. The section does not provide, either in its letter or its spirit, that no claim should be valid against the United States unless an order for additional service had been made by the Postmaster General. It was very proper to limit and check the discretion of that officer, and that was a sufficient reason for the provision. It was unnecessary to do anything more, for Congress reserved the subject of implied contracts, and had not then conferred the power of investigating them upon any tribunal. It cannot be supposed that the framers of the act looked forward to a period twenty years distant, when this Court should be constituted, and intended to provide that although the Court should have jurisdiction of implied contracts, a claim of this kind should not be valid without a special order from the Postmaster General.

"It is to be noticed, also, that this section, after the various restrictions alluded to have been stated, contains a proviso that 'the Postmaster General may make temporary contracts until a regular letting can take place.' The contract in which the claimant had an interest expired on the 30th of June, 1850, and the contracts for the new service went into operation on 1st July, 1850. If the Postmaster General might make temporary express contracts, the United States may then be bound by the obligation of an implied contract, proved in such a way as is recognized by the rules of law to be binding upon individuals.

"But there is another provision in this section which states the rule of compensation in explicit terms, and which does not appear to be subject to any modifications. It is provided that 'no additional compensation shall be made to any mail contractor, so as that the compensation for additional regular service shall exceed the exact proportion which the original compensation bears to the original services stipulated to be performed.' The principle of this rule is adopted as the correct one in 1 Parsons on Contracts, 542. In remarking on changes in a contract, which necessarily imply an increased price, and which are assented to by the employer, the author says: 'The question may then arise, whether he is to pay for them according to the usual rate of charging for such work, with no reference to the contract, or whether he must pay only according to the rate of contract. Some cases hold the former, but we think the better practice and the better reason in favor of the latter.'

"It appears from a certificate by George W. Grant, the claimant's predecessor in the contract, and under whom the claimant performed the service, which comes to us from the Post Office Department, through the House of Representatives, that from the 1st of July, 1847, to the 1st of February, 1848—the roads at that time being uncommonly good—he transported the mail from San Augustine to Houston in two-horse coaches, with sixteen horses. As the claimant put upon the line four-horse coaches, he would require thirty-two horses, or double the number used by Grant, a fair compensation for

which would be, according to the statute rule, double the sum paid under the original contract. He transported the mail one year and eight months, for which he was paid at the rate of \$6,894 per year, or \$11,490 for the whole period. And the same sum, in addition to what he has received, he is now entitled to recover of the United States, and we report a bill accordingly."

Then, as the Court founded their decision upon Mr. Grant's certificate, and without any light upon the subject as to the increase of service, assumed that it would require double that number of horses; and the Court will here bear in mind that Mr. Grant's certificate only covered the ground from San Augustine to Houston, and not from Sabine town to Houston. And petitioner will here remark, that when he first commenced the service on the routes he placed on and ran twenty horses from Sabine town to Houston, while running two-horse hack service, and, as the Court now sees from the testimony before them, increased it to seventy-two horses; and the cost of the increase of a change of coaches from two-horse hacks to four-horse post coaches was still greater, by substituting coaches, costing from three hundred and fifty to five hundred dollars, in lieu of hacks costing from one hundred to one hundred and fifty dollars, besides a heavy increase of expense on the harness.

Petitioner begs leave here to state that, in asking Congress for relief, he wrote out his own petition, asking no specific amount, but to be paid for the extra services he had performed for the country. And the Senate of the United States framed a bill, which passed that body, requiring the Postmaster General to settle with him upon the principles of law and equity, and to pay him for the extra services which he had performed. But when the matter was referred to this honorable Court Mr. Evans forwarded a copy of the petition to petitioner for verification; he remonstrated against the petition, as the sum specified did not more than half cover the ground of the expenses incurred by him. He informed him that he wished to have the petition verified in the shape it was in; that he could and would so amend it as to cover the necessary amount. He subsequently amended the petition by leave of the honorable Court, but the sum specified in the amended petition does not cover the amount of the actual expenses incurred by petitioner. And he would refer your honors to the petition first presented to the Congress of the United States by the petitioner, showing that the petitioner only asked for such sum as he was justly entitled to for the extra services he had rendered the government. And your honors can see clearly from the testimony before you that the increase of the service was from twenty to seventy-two horses, and that fifteen miles to the team is long and heavy service for four-horse coach teams, and that nothing less than seventy-two horses could perform the service. And in making up your decision in this case petitioner hopes and trusts your honors will take all the just and equitable grounds of the case into consideration, and grant him such relief as the nature of the case, in all its bearings in justice and equity, demands. And when the case is again reported by this honorable Court to Congress for

its affirmation, he hopes and trusts he will not be told that it cannot pass the House of Representatives without a sum of money sufficient to fee two or three influentials in that House. If he is, he will, as he always has done, trust to the honesty of the representatives of his country to see that justice is done to one of her citizens.

ALMANZON HUSTON.

CONCLUDING ARGUMENT.

IN THE COURT OF CLAIMS.

ALMANZON HUSTON *vs.* THE UNITED STATES.

The attorneys having agreed to submit this case upon the facts without oral argument, and the plaintiff having filed his printed argument on the case on the 8th of November last, since which time the Solicitor has asked from the Post Office Department additional evidence, and as I find the only evidence relied upon to operate against the claim is the ordering of the weighing of the mails at the city of Houston, I have thought proper to explain more fully and clearly the situation of Houston, as it is not upon the main eastern and western lines leading from Red river to Austin and western Texas. And in order more clearly to show to the Court the true situation of the line, I here submit a sketch of Cordova's late map of Texas, from which it will be seen that Houston lies 87 miles south southeast of that line from Huntsville, where it leaves the main western line and runs south southeast 87 miles to Houston, and the main western line continues on direct to Austin by way of Washington, where it intersects the western line from Houston to Austin. And the testimony shows that the only mail weighed at Houston was the mail leaving that place for the east, and not the mail from the east to Houston, which came through from Red river; and when the States' mail (as we called it) came up Red river no mail matter left Houston for the east but the Galveston and Houston city mails; and when the State mails were sent by the way of Galveston from New Orleans it was divided at Houston, and the western mails went direct from Houston on to Austin, intersecting the main line from eastern Texas to western, at Washington. There is also a side line coming down from the upper Trinity, through the counties of Dallas, Navarro, Limestone, Freestone, and Anderson counties, by the way of Palestine to Crockett, where it intersects this main eastern and western line from Red river on to Austin. And it would have been as proper to have ordered the weighing of the mails at Palestine as at Houston, in order to ascertain their increase upon the main line from eastern to western Texas. I have contemplated the course taken by the Solicitor in my previous argument, and have endeavored to place the case before the honorable Court upon its true merits. And with these few additional remarks by way of explanation as to the true position of the line and the weighing of the mails,

your honors will also see that the mails that were weighed at Nacogdoches by Mr. Coon, postmaster at that place, were only the mails from Houston and the west, and not the great (States') mails sent up Red river and through to the west on this line. From the fact that the most of that mail did not pass through the post office at Nacogdoches, being put up for western Texas, and not opened until arriving at the place directed to at New Orleans; and the evidence clearly shows that the mails were doubly large going west than they were coming east from the west or Houston. I now beg leave to submit the case, asking of the Court as early a report as can reasonably be granted.

ALMANZON HUSTON,
Plaintiff.

IN THE COURT OF CLAIMS.—No. —.

ALMANZON HUSTON *vs.* THE UNITED STATES.

Solicitor's Brief.

This case is resisted by the United States upon the grounds herein-after stated, to wit:

1st. The petitioner does not make out such a claim as will authorize this Court to afford the relief prayed. The contract now given in evidence shows that the petitioner contracted to carry the mail of the United States on 'the routes therein specified in two-horse post coaches. This contract does not specify or call for any particular weight of mail, or from what offices the mail to be carried is to come or is to go, but requires the contractor to carry all mail sent on said routes, even to the exclusion of passengers, within the limits of two-horse post coach service, and that limit has not been exceeded.

2d. If the petitioner rests his demand on the allegation that extra service has been performed, then the right to recover on such allegation is resolved on two grounds:

First, there was no extra service performed; the contract does not stipulate for any weight of mail below two-horse post coach service, or for the carriage of any mail usually coming from or going to particular offices, or carried over particular routes; then the suggestion in the evidence that extra mail matter carried on those routes is unfounded.

The United States have a right to the entire capacity of the vehicle contracted for, and the evidence does not show that that capacity has been exceeded. The Second Assistant Postmaster General, in a letter of the 23d January, 1858, addressed to the assistant Solicitor of this Court, states as follows:

The department cannot account for the discrepance in the weight of the mails made by the report of M. K. Snell, the postmaster at Houston, Texas—being at one time 400 pounds and at another time only 166 pounds—excepting on the last named occasion it was required by the department, with a view to such action as might be necessary, and on the former given to the contractor *ex parte*. I will, however, state that if the average weight of the mails had been 400 pounds it would not have been sufficient to justify any action for a change in the mode of service, as 500 pounds is the *minimum* weight required for two-horse coach service.

3d. But assuming, for the sake of argument, that the petitioner did perform extra service, still he has no legal claim against the United States, because said service was performed in violation of existing acts of Congress and in the face of the declaration of the Post Office Department that no allowance would be made therefor.

The 43d section of the act of the 3d of March, 1825, (4 S. L., p. 114,) forbids any allowance over the amount stipulated in the contract, unless additional service be required.

The 23d section of the act of July, 1836, (5 S. L., p. 8,) forbids the allowance of additional compensation, except in exact proportion to the original service and compensation, and forbids any extra allowance for increased speed unless additional stock and carriers are rendered necessary; and when any extra service shall be ordered the amount of the allowance therefor in dollars and cents shall be signified in the order for such service and be forthwith entered upon the books of the Post Office Department, and no additional compensation shall be paid for any extra regular service rendered before issuing of such order and the making of such entry; and every order, entry, or memorandum whatever, on which any action of the department is to be had, allowance made, or money paid, and every contract, paper or obligation drawn up in said office, by any officer thereof, shall have affixed to it its true date, and every paper relating to contracts or allowances filed in said office shall have the date of its filing endorsed thereon.

Under these provisions of the law and the contract in this case, the Postmaster General is forbidden to make an allowance for additional service, unless more than two-horse post coach service be performed, and in such case said allowance must be preceded by the required orders; and the petitioner, therefore, can certainly raise no implied contract to pay him more without showing that he performed more than two-horse post service, and in the way designated by said acts of Congress, or subverting the legislation of Congress.

The proviso in the 23d section of the act of 1836, authorizing the Postmaster General to make temporary contracts until a regular letting can take place, does not apply to this case. It was intended to prevent the interruption of the mail service by authorizing the Postmaster General to make temporary contracts where contractors under the regular lettings failed to enter upon their contracts at the time stipulated; or where an established mail-route was not bid for at the regular lettings, and it became necessary for public convenience,

in the meantime, for the Postmaster General to enter into a temporary contract, and to continue the same, until a permanent contract could be made in the regular way. If this is not the true interpretation of this proviso, then the act in reference to extra allowance would seem to have no meaning.

4th. If the petitioner did perform extra service, still he cannot recover, because he acted voluntarily, and in the face of a declaration of the Post Office Department that no allowance could or would be made therefor. In the letter already referred to, the Second Assistant Postmaster General says, in speaking of the petitioner's claim: I have to inform you (Assistant Solicitor) that the change in mode of service from two-horse coaches to four-horse coaches in certain routes in Texas, for which Mr. A. Huston claims from November, 1848, to 30th June, 1850, was not ordered by the department, because there is no power under the law to do so without readvertising the routes, which was not done, inasmuch as it was not necessary.

The letter of the Postmaster General (Campbell) of the 24th of May, 1856, and addressed to the chairman of the Committee on Claims of the Senate, gives a full statement of the facts in this case, and clearly shows that the department repudiated the claim here set up by the petitioner. The application of the petitioner to increase his service from two-horse post coaches to four-horse coaches, was refused by the department, as will clearly appear from the facts stated in said letter.

Now this demand is made to depend upon an implied promise to pay, and it is not denied that the United States may be liable upon such an undertaking under proper circumstances, but this is not such a case. Here the acts of Congress referred to interpose to prevent such implication, and the government can only be bound in accordance with their provisions.

It is denied, however, that the law will imply a promise to pay where there is an express declaration of a party that he will not be bound, or where there is an express agreement.—(See Chitty on Contracts, p. 18, note; *Whitney vs. Sullivan*, 7 Mass., 107; *Worthen vs. Stephens*, 4 Mass., 448; *Neston vs. Davis*, 24 Main., 374.)

The decision formerly made by this Court in favor of the petitioner proceeded upon the idea that extra services had been performed, and that the Post Office Department made no objection thereto. It now, however, appearing, from a new state of facts, that an objection was made, the authorities cited by the Court in support of its opinion are relied upon by the United States in resisting the petitioner's demand.

D. RATCLIFFE,

Assistant Solicitor of the Court of Claims.

COURT OF CLAIMS.

ALMANZON HUSTON *vs.* THE UNITED STATES.

LORING, J., delivered the opinion of the Court.

The petitioner, under the contracts set forth in his petition, was contractor from November 1, 1848, to July 30, 1850, for carrying the mails from Sabine town, through San Augustine, Nacogdoches, Crockett, and Huntsville, to Houston, and from Huntsville to Washington, *in two-horse coaches*, semi-weekly, for the sum of \$6,894 per year.

The petitioner alleges that, from the bad condition of the roads and the increase of mail matter, the two-horse coaches specified in the contract became insufficient for the service, and that therefore he "placed on the entire route *four-horse post coach service* on the first day of November, 1848, and continued it to the 30th day of June, 1850, when his contract expired;" that this additional service was absolutely necessary, and was made known to the Postmaster General, and not objected to by him, and that the benefit of it accrued to the United States; and he claims an allowance for this additional service upon the ground of an implied contract therefor.

The deponents for the petitioner prove that four-horse coach service was rendered, but they do not fix with precision when it began or when it was extended over the whole route; their general statement is, that such service was rendered "*during 1848 and 1849.*"

Ephraim Coon testifies, answer 3d: The said petitioner, Huston, carried the United States mails, during the years 1848 and 1849, from the town of Sabine to the town of Huntsville, and, I think, to the city of Houston, in Texas, from at least as early as the summer of 1848, in four-horse post hacks, and from the fall of 1848 in four-horse mail stages.—(*Ibid.* answer to 7th interrogatory.)

Amaziah Baker testifies, answer to 8th interrogatory: The service performed by the said Huston on the routes in question was four-horse service. Early in the summer of 1848 he put on four-horse service from Sabine town to Nacogdoches; at what time he completed putting on four-horse service to the city of Houston I cannot say.

J. Pinckney Henderson testifies, answer to 8th interrogatory: I do not know at what time in the year 1848 he put four-horse service on the road; but on this part of the line he had four-horse service on the line in the summer of 1848.

In the letter of the petitioner to the department, dated July 5, 1849, exhibit A, he says: "I run the entire lines the first nine months without a failure with but two-horse service, and the two last quarters has been run with four-horse service." This evidence from the petitioner places the beginning of the four-horse service at January 1, 1849. And the petition of the citizens of Houston to "the House of Representatives, or the Postmaster General," (exhibit B,) which is dated January 1, 1850, says: "That he first carried the said mail in a two-horse vehicle, but that he has carried the said mail for

about one year, and still carries it, in a four-horse conveyance with four horses." The burden of proof is on the petitioner; and giving every part of the evidence its due weight, the beginning of the four-horse service is not positively proved to have been before January 1, 1849. All the testimony show that such service was continued to the end of the contract, July 1, 1850.

The deponents for the petitioner prove that the roads of the route were in bad condition, and in places, at certain times, almost impassable; that the streams were high, and the river bottoms overflowed; that these results had followed from unusual quantities of rain in 1849 and 1850. And the petitioner, in his letter, cited before, of June 5, 1848, exhibit A, writes thus: "And it is not in the power of man to avoid failures in one of our southern rainy seasons." The general result of the evidence is expressed in General Houston's answer to the 5th interrogatory addressed to him as to the state of the roads "during the years 1848, 1849, and 1850, to the end of the contract." He testifies that "in the summer and fall of the year they were tolerably good; in the winter and spring they were, at times, impassable in anything like regular travelling, and I would suppose as bad as roads could be in a country like ours."

Benjamin F. Benton, whose testimony upon the condition of the roads and the causes of it is the most minute, in his answer to the 8th interrogatory testifies: "A two-horse coach might have been sufficient to have transported the mails for a portion of the season, but for perfect certainty, winter and summer, a four-horse coach was absolutely necessary. I doubt whether six horses could have transported the mails that accumulated during high water."

It is observable that in the petition of the claimant to Congress, dated April, 1850, and sworn to December 31, 1850, he does not refer to the condition of the roads as a reason for increasing the service, but specifies the increase of mail matter as the only cause for his so doing. He states: "Immediately on finding it was indispensable to place extra service on the line, and all out of the great increase of mail matter, I informed the Post Office Department," &c. And in his statement appended to that petition he says: "And from the great increase of the mail matter I was compelled to place a full and complete line of four-horse coaches upon the line or abandon the contract."

All the deponents concur in the increase of mail matter from the summer of 1848 to July 1, 1850, but few of them furnish any means by which the average weight of the mail matter can be determined.

George L. Clapp testifies, answer to 9th interrogatory: "The average amount of mail matter per trip was from three to five sacks, and from two to three leather pouches; and my means of information are, that I was mail agent, and frequently travelled with the mails."

Martin K. Snell testifies, answer 7th: "The mail carried by the said Huston averaged per trip from three to five mail bags, weighing an average in all of four hundred pounds. My means of information are, that I was postmaster at the city of Houston during 1848 and part of 1849.

Ephraim Coon testifies, in answer to 6th interrogatory: "I do not recollect what was about the average amount of mail matter on the routes for which the said petitioner, Huston, was contractor in 1848, but between the spring 1849 and spring of 1850 I frequently weighed the mail matter from said routes west of the town of Nacogdoches, and found the average per trip to have been 520 lbs. I was postmaster, and weighed the mails at the request of the contractor, and found one trip where the mail matter weighed thirteen hundred and seventy pounds. I do not recollect the weight of the mail matter east of Nacogdoches."

And in his answer to the 10th interrogatory he testifies: "During the year 1849 there was more than twice as much mail matter carried over the routes for which said petitioner, Huston, was contractor as there was in 1848. And there was continual gradual increase from 1849 to the close of said contract. I suppose the average per month of such increase from the beginning of 1848 to June, 1850, would be some nine or ten per cent."

Emery J. Huston, in his answer to the 6th interrogatory, testifies: "I think that the amount of mail matter carried on the routes for which said petitioner, Huston, was contractor, during the years 1848 and 1849 would average per trip, most part of three years, five hundred or five hundred and fifty pounds; and my means of information are, that I was agent on the line of said routes."

Benjamin F. Benton, in his answer to the 7th interrogatory, testifies: "I was frequently about the post office during those years, (1848, 1849, and 1850;) there were frequently half a dozen sacks of newspapers, pamphlets, books, periodicals, &c., &c., besides the letter and way mails. When the mails were detained for any length of time, as many as ten large sacks of mail matter would sometimes accumulate at an office. I should suppose the average weight of the large sacks of paper mail was about 100 lbs. each, and that of the large sacks of letter mails 150 lbs."

It appears from the letter of Postmaster General Campbell, dated May 24, 1856, that by a report, dated May 15, 1849, made to the department by Martin K. Snell, the average weight of the mail sent on the routes to San Augustine from April 14 to May 13, both days inclusive, was 166 pounds and a fraction for each trip. It is claimed by the petitioner that the discrepancy between the report and the testimony of Martin K. Snell is accounted for, *first*, by the fact that for the report to the department the mails were weighed by Mr. Snell only at Houston, while the western mail came on to the routes at Huntsville, and could not be included in the weighing at Houston; whereas Mr. Snell in his deposition testifies as to the average weight of the mail *over the routes*, including the western mail received on to the routes at Huntsville.—(Petitioner's printed argument, p. 13.) And, *secondly*, by the testimony of J. B. Johnson, that "*in the summer of 1849*" mail matter had been diverted from the routes of the petitioner and sent by the way of Galveston because of low water in Red river.—(Printed argument for the petitioner, pages 5 and 6.)

It also appeared from the deponents for the petitioner that occa-

sionally mail matter which should have been sent to Galveston was carried over his route, and they all concur in the opinion that, from the state of the roads and the quantity of mail matter, four-horse coach service was necessary for the performance of the work. The earliest reports of failures by the petitioner made to the department are dated in March, 1850, and in them it is stated that the causes assigned for the failures at the time, by the drivers, were, that some of their horses had died, and that the stages were out of repair. The causes assigned for the failures in the reports dated in April and May are, that the waters were so high they could not be crossed with the stage. But the letters of the petitioner to the department, dated, respectively, July 5, 1849, and September 12, 1849, (exhibits —,) refer to fines imposed on him previous to those dates, for failures, and attributes these failures to the nature of the country through which the routes run and "high times of water."

It appears from the letter of the Postmaster General, (Campbell,) dated 15th March, 1856, that the contracts "for the new service, which went into operation 1st July, 1850, (when the contracts of the petitioner expired,) covering the same ground, and by the same points, tri-weekly," the price was \$19,590. The letter states, "you will perceive that the former service is *twice* a week in *two-horse* coaches; the latter *three times* a week, *four-horse* coaches, and under contracts at different annual lettings."

It appears by the deposition of Martin K. Snell, (7th interrogatory and answer,) that the average weight of mail matter "on the routes of which said Huston was contractor" was "all of four hundred pounds." By the answer 6th of Emory J. Huston, that it would average 500 to 550 pounds per trip most part of 1848 and 1849 for the routes. By the deposition of Ephraim Coon, (answer to interrogatory 6th,) that the average amount of mail matter from the routes *west* of Nacogdoches was "520 pounds." It does not appear that either of these amounts, except the last, was ascertained by actually weighing the mail matter.

In his petition to Congress, dated April, 1850, the petitioner states "that he became sole owner of the line 1st November, 1848;" "that on becoming owner, &c., I found that I must abandon the contract, or place a full and complete line on it of four-horse coaches;" "that immediately on finding it indispensable to place extra service on the line, &c., I informed the Post Office Department, and asked for a corresponding increase of service." These statements represent the first application to the department for the increase of service, for which the allowance is claimed to have been made soon after November 1, 1848.

But the letter of Postmaster General Campbell of May 24, 1846, shows that the first application for such increase of service was received on the 10th of March, 1849, through Messrs. Houston and Kauffman, and the letter states, in reference to such application, as follows: "This was immediately answered by stating that no additional pay could be allowed for such improvement unless absolutely required by the size and weight of the mails, and that instructions would be forwarded to weigh the mails each trip for four weeks."

And the same letter subsequently states : "Nothing whatever appears to have been said of the necessity of four-horse coaches on account of the weight of the mails until in March, 1849."

The letter also states as follows : "On the 15th May a letter was received from the contractor, (A. Huston,) stating that he had been running four-horse coaches, and was about withdrawing some of his teams, but concluded to continue until he could hear from the department."

On the 10th June he was answered that no additional expense on his route could be incurred.

On the 12th July application for improving the service was received by Hon. S. Houston, (under date Nacogdoches, June 18, 1849.) On 4th August he was informed that the Postmaster General declined ordering the proposed improvement, because the average weight of the mail was shown to be only 166 pounds.

It is shown by the letter from the Post Office Department, dated November 3, 1848, (exhibit Z,) "that the department makes no contracts for the conveyance of any 'specific quantity of mail matter' by any mode of conveyance used. Contractors are expected to carry all the mail that may be presented within the capacity of the vehicle stipulated for, but no precise amount or bulk is or can be prescribed."

The testimony tended to show that the "passenger travel" upon the routes was limited.

James B. Johnson testified, (answer 7th :) "Sometimes the stage was so loaded with mail matter that it could not take a passenger;" and Samuel Houston testified, (answer 7th:) "I usually travelled in the stage when I could. I can form no correct estimate of the average weight and bulk of the mails; there were but few passengers, but the stage was usually well loaded with mail matter."

On all the evidence we find that the petitioner carried the mail over all his route in four-horse coaches, from at least as early as the 1st January, 1849, to July 1, 1850, and that, from the bad condition of the roads and the increase of mail matter, the service could not have been performed by two-horse coaches in the winters and springs of that period.

The contract which the petitioner alleges is an implied contract for additional service in carrying the mail, and an allowance therefor made with the Postmaster General as the agent of the United States.

The testimony disproves such a contract. The letter of Postmaster General Campbell, dated March 26, 1856, and brought into the case since it was last heard here, proves that the petitioner's applications for four-horse service were refused as often as, and as soon as, they were made. The petitioner was free to use four-horse coaches if it was his pleasure for any reason so to do; that matter was not within the control of the department, and its mere knowledge of it, therefore, was not its adoption of it; and the express and reiterated refusal of the department to authorize or pay for such increase of service excludes any contract for it on the part of the United States. The implied contract alleged, therefore, is not shown, and the effect of such a contract does not come into consideration.

We are of opinion the petitioner is not entitled to relief.

